REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

CHAPTER 21
EVIDENCE

600.2101 Cases tried without jury; objections to testimony or evidence; exclusion of testimony from record; taking of excluded testimony; return of excluded testimony to court of appeals or supreme court.

Sec. 2101. In all cases tried without a jury, the court shall rule upon all objections to the competency, relevancy, or materiality of testimony, or evidence offered; and in all cases where the court is of the opinion that any testimony offered is incompetent, irrelevant, or immaterial, the same shall be excluded from the record. If the testimony so offered and excluded is brief, the court may in its discretion permit the same to be taken down by the reporter or recorder separate and apart from the testimony received in the case; and in case of appeal, the excluded testimony may be returned to the appellate court under the certificate of the trial court. If the excluded testimony is not taken and returned to the court of appeals or supreme court on appeal, and upon the hearing of the appeal, the court of appeals or supreme court shall be of the opinion that the testimony is competent and material, it may order that the testimony be taken by deposition or under a reference, and returned to the court.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1986, Act 308, Eff. Jan. 1, 1987.

***** *600.2102 THIS SECTION IS AMENDED EFFECTIVE APRIL 1, 2013: See 600.2102.amended* *****

600.2102 Affidavit taken in other state or country; authentication.

Sec. 2102. In cases where by law the affidavit of any person residing in another state of the United States, or in any foreign country, is required, or may be received in judicial proceedings in this state, to entitle the same to be read, it must be authenticated as follows:

(1) It must be certified by the consul general, deputy consul general, or some consul or deputy consul of the United States resident in such foreign country, to have been taken and subscribed before him, specifying the time and place where taken and have the consular seal attached; or

(2) It must be certified by some judge of a court having a seal to have been taken and subscribed before him, specifying the time and place where taken;

(3) The genuineness of the signature of such judge, the existence of the court and the fact that such judge is a member thereof, must be certified by the clerk of the court under the seal thereof;

(4) If such affidavit be taken in any other of the United States or in any territory thereof, it may be taken before a commissioner duly appointed and commissioned by the governor of this state to take affidavits therein, or before any notary public or justice of the peace authorized by the laws of such state to administer oaths therein. The signature of such notary public or justice of the peace, and the fact that at the time of the taking of such affidavit the person before whom the same was taken was such notary public or justice of the peace, shall be certified by the clerk of any court of record in the county where such affidavit shall be taken, under the seal of said court.

History: 1961, Act 236, Eff. Jan. 1, 1963.

***** *600.2102.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 1, 2013* *****

600.2102.amended Affidavit taken in other state or country; authentication.

Sec. 2102. (1) If by law the affidavit of a person residing in another state of the United States or in a foreign country is required or may be received in an action or judicial proceeding in this state, to entitle the affidavit to be read, it must be authenticated under the uniform recognition of acknowledgments act, 1969 PA 57, MCL 565.261 to 565.270, or be an unsworn declaration executed under chapter 21A.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 2012, Act 361, Eff. Apr. 1, 2013.

600.2103 Judicial records of other states or countries; use as evidence; authentication.

Sec. 2103. The records and judicial proceedings of any court in the several states and territories of the United States and of any foreign country shall be admitted in evidence in the courts of this state upon being authenticated by the attestation of the clerk of such court with the seal of such court annexed, or of the officer in whose custody such records are legally kept with the seal of his office annexed.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2104 Judicial records of foreign countries; copies as evidence.

Sec. 2104. Copies of such records and proceedings in the courts of a foreign country, may also be admitted in evidence upon due proof:

(1) That the copy offered has been compared by the witness with the original, and is an exact copy of the whole of such original;

(2) That such original was in the custody of the clerk of the court or other officer legally having charge of the same; and

(3) That such copy is duly attested by a seal, which shall be proved to be the seal of the court in which such record or proceeding shall be.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2105 Judicial records of foreign countries; proof by common law methods.

Sec. 2105. Sections 2103 and 2104 shall not prevent the proof of any record or judicial proceedings of the courts of any foreign country, according to the rules of the common law, in any other manner than that herein directed.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2106 Court order, judgment, or decree of court of record; certified copy as evidence.

Sec. 2106. A copy of any order, judgment or decree, of any court of record in this state, duly authenticated by the certificate of the judge, clerk or register of such court, under the seal thereof, shall be admissible in evidence in any court in this state, and shall be prima facie evidence of the jurisdiction of said court over the parties to such proceedings and of all facts recited therein, and of the regularity of all proceedings prior to, and including the making of such order, judgment or decree.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2107 Public records; certified transcript as evidence.

Sec. 2107. Copies of all papers, records, entries and documents, required or permitted by law to be filed by any public officer in his office, or to be entered or recorded therein and duly filed, entered or recorded according to law, certified by such officer to be a true transcript compared by him with the original in his office, shall be evidence in all courts and proceedings, in like manner as the original would be if produced.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2108 Secretary of state; certificate of nonexistence of record.

Sec. 2108. Whenever the secretary of state charged with the legal custody of any paper, document or record shall certify that he has made diligent examination in his office for such paper, document or record and no such paper, document or record exists, such certificate shall be prima facie evidence of the facts so certified, in all causes, matters and proceedings in the same manner and with the like effect as if such officer had personally testified to the same in the court, or before the officer before whom such cause, matter or proceeding may be pending.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2109 Recorded conveyance and instruments; certified copies.

Sec. 2109. All conveyances and other instruments authorized by law to be filed or recorded, and which shall be acknowledged or proved according to law, and if the same shall have been filed or recorded, the record, or a transcript of the record, or a copy of the instrument on file certified by the officer in whose office the same may have been filed or recorded, may be read in evidence in any court within this state without further proof thereof; but the effect of such evidence may be rebutted by other competent testimony.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2110 Recorded conveyances and instruments; record in county other than situs; certified copies.

Sec. 2110. The record of deeds or other instruments affecting the title to lands in this state heretofore recorded in counties in any state other than the county in which the lands described therein are located, or a certified copy thereof, shall be deemed prima facie evidence of the execution and delivery of such instrument, and as such shall be received in all courts in this state, and such certified copy may be recorded in the county in which such land is situated, with like effect as the original deed or other instrument.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2111 Certificate of lost paper as evidence of loss.

Sec. 2111. Whenever any officer to whom the legal custody of any paper, document or record shall belong, shall certify that he has made diligent examination in his office for such paper, document or record, and that it cannot be found, such certificate shall be presumptive evidence of the facts so certified, in all causes, matters and proceedings in the same manner and with the like effect as if such officer had personally testified to the same in the court, or before the officer before whom such cause, matter or proceeding may be pending.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2112 Certificates of justices of the peace of other states as evidence.

Sec. 2112. The official certificate of any justice of the peace within any other state of the United States, of the proceedings and judgment in any case before him as such justice, with the certificate of the clerk of any court of record in the county or district in which such justice has executed his office, attested by his official seal, setting forth that the signature to the certificate of the justice is genuine, and that he was such justice at the date of such proceedings and judgment, shall be sufficient evidence of such proceedings and judgment.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2113 Constitution, laws, and resolutions; official publication as evidence.

Sec. 2113. The printed copies of the constitution, laws and resolutions of this state, whether of a public or private nature, which shall be published under the authority of the government, shall be admitted as sufficient evidence thereof in all courts, and in all proceedings within this state.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2114 Repealed. 1967, Act 178, Eff. Nov. 2, 1967.

Compiler's note: The repealed section stated conditions under which printed copies of constitution, laws, and resolutions of any other of the United States, of territory thereof, or of any foreign state were admissible as prima facie evidence thereof and authorized Michigan courts to take judicial notice of them.

600.2114a Issues of foreign law; notice; evidence; duties of court; review on appeal.

Sec. 2114a. A party who intends to raise an issue concerning the law of any jurisdiction or governmental unit thereof outside this state shall give notice in his pleadings or other reasonable written notice. In determining the law of any jurisdiction or governmental unit thereof outside this state, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the rules of evidence. The court, not jury, shall determine the law of any governmental unit outside this state. Its determination is subject to review on appeal as a ruling on a question of law.

History: Add. 1967, Act 178, Eff. Nov. 2, 1967.

600.2115 Repealed. 1967, Act 178, Eff. Nov. 2, 1967.

Compiler's note: The repealed section stated conditions under which printed books or pamphlets would be admissible as prima facie evidence of session or other statutes of any of the United States, of territories thereof or of any foreign jurisdiction.

600.2116 Laws, bylaws, regulations, resolutions, and ordinances of city, village, or township as evidence.

Sec. 2116. All laws, bylaws, regulations, resolutions, and ordinances of the common council or of the board of trustees of an incorporated city or village or the township board of a township in this state may be read in evidence in all courts and in all proceedings before any officer, body, or board in which it is necessary to refer thereto, from a record thereof, kept by the clerk or recorder of the city, village, or township; or from a printed copy thereof, purporting to have been published by authority of the common council, board of trustees, or township board, in a newspaper published in such city, village, or township; or from any volume of ordinances, codification, or compilation of ordinances purporting to have been printed by authority of the common council or board of trustees of such city, village, or township; and the record, certified copy, volume, codification, or compilation shall be prima facie evidence of the existence and validity of such laws, regulations, resolutions, and ordinances, without proof of the enactment, publishing, or any other thing concerning the same.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1973, Act 140, Imd. Eff. Nov. 13, 1973.

600.2117 Device by way of seal as evidence of seal.

Sec. 2117. Any device affixed to any deed or instrument in writing by way of seal, by any person signing the same, executed since the thirty-first day of December, 1827, or hereafter to be executed, shall be received in all courts, and upon all occasions as evidence that the same deed or instrument was duly sealed, and equally

valid and effectual, as if the same had been actually sealed; but this section shall not apply to official and corporate seals, in cases where, according to law, an actual sealing may be required.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2118 Repealed. 1967, Act 178, Eff. Nov. 2, 1967.

Compiler's note: The repealed section stated that common law of any other of the United States, of any territory thereof, or of any foreign state could be proved as facts by parol evidence, that books of reports of cases adjudged in their courts could be admitted as evidence of such law, and that courts could take judicial notice thereof just as in case of statutes.

600.2118a Foreign records and laws; evidence; copies, certification.

Sec. 2118a. (1) An official record kept within the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal zone, the trust territory of the Pacific islands or the Ryukyu islands, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that the officer has the custody. The certificate may be made by a judge of a court of record having jurisdiction in the governmental unit in which the record is kept, authenticated by the seal of the court, or by any public officer having a seal of office and having official duties in the governmental unit in which the record is kept, authenticated by the seal of his office.

(2) A foreign official record, or an entry therein, when admissible, for any purpose, may be evidenced by an official publication or copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position of the attesting person, or of any foreign official whose certificate of genuineness of signature and official position either relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court, for good cause shown, may admit an attested copy without final certification or permit the foreign official record to be evidenced by an attested summary with or without a final certification.

(3) The statutes, codes, written laws, executive acts or legislative or judicial proceedings of any domestic or foreign jurisdiction or governmental unit thereof may also be evidenced by any publication proved to be commonly accepted as proof thereof in the tribunals having jurisdiction in that governmental unit.

(4) A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in this act in the case of a domestic record, or complying with the requirements of this act for a summary in the case of a record in a foreign country, is admissible as evidence that the records contain no such record or entry.

(5) The proof of official records of entry or lack of entry therein may be made by any other method authorized by law.

History: Add. 1967, Act 178, Eff. Nov. 2, 1967.

600.2119 Judgment; record of certified copy as evidence.

Sec. 2119. Whenever any certified copy of a judgment or decree shall have been, or shall be recorded in any register of deeds' office, such record may be read in evidence in all courts of this state, with like force and effect as such certified copy.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2120, 600.2121 Repealed. 1974, Act 297, Eff. Apr. 1, 1975.

Compiler's note: The repealed sections pertained to proof of proceedings before justice of peace.

600.2122 Certified as evidence; United States land office records.

Sec. 2122. Copies of all papers, documents, plats, maps, entries, or records filed, entered, or recorded in any land office of the United States situated in the state of Michigan, certified by the register or receiver of such land office to be a correct transcript compared by him with the original in said land office, shall be evidence in all courts and proceedings in like manner and to the same extent as the original would be if produced.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2123 Certified copies as evidence; records of board of control of Saint Mary's Falls ship canal.

Sec. 2123. Copies of all papers, documents, maps, plats, entries, or records filed with the board of control of the Saint Mary's Falls ship canal, or entered in the records of the proceedings of the board of control, certified by the state treasurer of this state to be a true transcript compared by the state treasurer with the original in the office of the board of control, shall be evidence in all courts and proceedings in like manner and to the same extent as the original would be if produced.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 2002, Act 429, Imd. Eff. June 5, 2002.

600.2124 Certified copies as evidence; United States weather record.

Sec. 2124. Any copy of the record of observations in regard to the condition of the weather taken under the direction of the department of agriculture of the United States, or any other federal agency, when certified by the officer in charge thereof at the place where the same is taken and kept, that the same is a true copy of the record on file in said department or agency, may be received in evidence in any civil or criminal cause in any court, and shall be prima facie evidence of the facts and circumstances therein contained and stated.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2125 Proof of publication; notice of application to court or judicial officer.

Sec. 2125. When notice of any application to any court or judicial officer for any proceeding authorized by law, is required by law to be published in 1 or more newspapers, an affidavit of the publisher of any such paper, or of his agent, annexed to a printed copy of such notice taken from the paper in which it was published, and specifying the times when, and the paper in which such notice was published may be filed with the proper officer of the court, or with the judicial officer before whom such proceeding shall be pending, at any time within 6 months after the last day of the publication of such notice.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2126 Proof of publication; notice of sale of real property.

Sec. 2126. When any notice of a sale of real property is required by law to be published in any newspaper, an affidavit of the publisher of such paper, or of his agent, annexed to a printed copy of such notice taken from the paper in which it was published, may be filed at any time within 6 months after the last day of such publication, with the county clerk of the county in which the premises sold are situated, or if such sale were made in pursuance of the order of any judge of probate or circuit court, such affidavit may be filed with such judge of probate or with a clerk of such circuit court, as the case may be.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2127 Proof of publication; presumptive evidence.

Sec. 2127. The original affidavit so filed pursuant to the 2 last sections 2125 and 2126, and copies thereof duly certified by the officer in whose custody the same shall be, shall be presumptive evidence in all cases, of the facts contained in such affidavits.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2128 Proof of publication; prima facie evidence.

Sec. 2128. The affidavit of the publisher of a public newspaper, published in this state, or the affidavit of his agent, of the publication of any notice or advertisement, which by any law of this state shall be required to be published in such newspaper, shall be entitled to be read in all courts of justice in this state, and in all proceedings before any officer, body or board in which it shall be deemed necessary to refer thereto, and shall be prima facie evidence of such publication, and of the facts therein stated.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2129 Proof of publication; copy of record of document; certification; court orders; seal.

Sec. 2129. (1) Whenever a certified copy of any affidavit, record, document or paper, is declared by law to be evidence, such copy shall be certified by the clerk or officer in whose custody the same is by law required to be, to have been compared by him with the original, and to be a correct transcript therefrom, and of the whole of such original; and if such officer have any official seal by law, such certificate shall be attested by such seal; and if such certificate be given by the clerk of any county, in his official character as such clerk, it shall be attested by the seal of the court of which he is clerk.

(2) But this section shall not be construed to require the affixing of the seal of any court to any certified copy of any rule or order made by such court, or of any paper filed therein, when such copy is used in the same court or before any officer thereof; nor to require the seal of the supreme court to be affixed to a certified copy of any rule or order of that court, when used in any circuit court.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2130 Schedules, classifications, tariffs, and supplements filed with regulatory commissions; copies as evidence; presumption.

Sec. 2130. Printed copies of schedules and classifications and tariffs of rates, fares and charges, and supplements thereto, filed with any federal or state regulatory commission, which show respectively the number assigned to them by such commission which may be stated in abbreviated form, and an effective date, may be received in evidence without certification, and shall be presumed to be correct copies of the original schedules, classifications, tariffs, and supplements on file with such commission.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1972, Act 141, Imd. Eff. May 22, 1972.

600.2131 Written instruments; proof; acknowledgment.

Sec. 2131. Every written instrument, except promissory notes and bills of exchange, and except the last wills of deceased persons, may be proved or acknowledged in the manner now provided by law, for taking the proof or acknowledgment of conveyances of real estate, and the certificate of the proper officer endorsed thereon, shall entitle such instrument to be received in evidence on the trial of any action, with the same effect, and in the same manner, as if such instrument were a conveyance of real estate.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2132 Marriage certificates and records as evidence.

Sec. 2132. The original certificates and records of marriage made by the minister, judge, or other person authorized to solemnize marriages, as prescribed by law, and the record thereof made by the county clerk, or a copy of such record, duly certified by the clerk, shall be received in all courts and places as presumptive evidence of the fact of the marriage.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1974, Act 297, Eff. Apr. 1, 1975.

600.2133 Marriage license or certificate; record as evidence.

Sec. 2133. The record of any license to marry, or of any marriage certificate, in any county clerk's office, or a certified copy thereof, shall be prima facie evidence in any court or proceedings in this state, with the same force and effect as if the original were produced, both as to the facts therein contained and as to the genuineness of the signatures thereto.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2134 Purchase of public lands; certificates as evidence.

Sec. 2134. Certificates of the purchase of public lands, signed by the receiver, shall be evidence in any court in this state, that the possession of the lands described in said certificate or certificates, is in the person or persons, his, her, or their heirs or assigns, holding said certificate or certificates, as against any person or persons, not having a better title to such land than actual possession.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2135 Breed of horses; evidence.

Sec. 2135. Whenever it becomes necessary to show the breeding of any horse in any action at law or in equity, the same may be shown by Wallace's year book, Wallace's American trotting register, the American Percheron horse breeders' and importers' association, Percheron society of America, the American Percheron horse breeders' association or the Percheron stud book of America; and whenever a horse is registered in any of the registers aforesaid, or with said society or either of said associations, the record of such registration or the society's or association's certificate of such registration under its corporate seal shall be prima facie evidence of the breeding of such horse.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2136 Library record, book, or paper; copy or reproduction admissible as evidence; fee; false certification; penalty.

Sec. 2136. (1) A copy of a record, book, or paper belonging to or in the custody of a public, college, or university library, or an incorporated library society, if accompanied by a sworn statement by the librarian or other person in charge of the record, book, or paper, that the copy is a true copy of the original in his or her custody, is admissible as evidence in a court or proceeding in like manner and to the same extent as the original would be if produced.

(2) A reproduction of a record, book, paper, or document belonging to or in the custody of a public, college, or university library, or an incorporated library society, in a medium pursuant to the records media act or a reproduction consisting of a printout or other output readable by sight from such a medium, if

accompanied by a sworn statement made by the librarian or other person in charge of the record, book, paper, or document, stating that the reproduction is made under his or her supervision or that of a duly authorized representative, and that nothing has been done to alter or change the original, that the reproduction is true to the original in his or her custody, is admissible as evidence in a court or proceeding in like manner as the original would be if produced.

(3) For making and certifying a copy under subsection (1), a fee of 25 cents may be charged. For making and certifying each reproduction under subsection (2), a fee of $1.00 may be charged. If the reproduction is a photocopy, the fee shall not exceed $1.00 and a further charge of 10 cents per folio and 50 cents per sheet for photocopies actually made.

(4) A person who certifies falsely under subsection (1) or (2) is guilty of a felony punishable by the same penalty provided by statute for perjury.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1992, Act 192, Imd. Eff. Oct. 5, 1992.

600.2137 Reproduction of court records; maintenance in archives; disposition or destruction of records; reproduction or copy admissible in evidence.

Sec. 2137. (1) If a public officer reproduces court records kept by him or her pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, the officer may offer the original records to the department or state agency responsible for maintaining the state archives for placement in the state archives. If the department or state agency responsible for maintaining the state archives accepts the offer within 30 days, the court shall transfer the records to that department or state agency. If the department or state agency responsible for maintaining the state archives does not accept the offer within 30 days, the court may dispose of or destroy the records in the manner provided for state agencies under sections 285 and 287 of the management and budget act, 1984 PA 431, MCL 18.1285 and 18.1287, and section 5 of 1913 PA 271, MCL 399.5. The record of a court shall not be disposed of or destroyed until the record has been in the custody of the court for not less than 6 years.

(2) In a county or probate court district in which the county board or boards of commissioners pass a resolution or resolutions for reproducing records pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, the judge of probate may have the records of the probate court reproduced in accordance with the resolution or resolutions. The judge of probate shall have a copy or a duplicate kept in a building outside of the probate office and shall keep a copy available in the probate office with any suitable equipment necessary for displaying the record at not less than its original size or for preparing copies for persons entitled to copies. The judge of probate then may order a record destroyed. A reproduction in a medium pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, or a reproduction consisting of a printout or other output readable by sight from such a medium is admissible as evidence before a court, commission, or administrative body the same as the original. The original file of an estate proceeding shall not be destroyed until 6 years after the date the discharge of the fiduciary is filed or 10 years after the last document is filed, whichever occurs first.

(3) A court of record other than the district court may order the destruction of a court reporter or recorder note, tape, or recording 15 years after the date that the note, tape, or recording was made for a felony case and 10 years after the date that the note, tape, or recording was made for any other case. One year after a transcript of a note, tape, or recording is filed with the court, the court may order the destruction of the note, tape, or recording. If a transcript of a trial or other proceeding in a court of record other than the district court is ordered other than for filing in the case file, the court reporter or recorder also shall prepare and shall file a certified copy of the transcript in the case file at the expense of the person ordering the transcript unless a copy has been filed with the court or unless the chief judge of the court orders otherwise in an order filed in the case file. As used in this subsection, "felony case" does not include proceedings in a case that occur before arraignment on information or indictment or proceedings in a case in which the defendant is not convicted of a felony.

(4) Except as provided in subsection (3), a judicial circuit of the circuit court may order the destruction of its files and records in a case in which action has not been taken during the 25 years immediately preceding the order of destruction. All of the following procedures shall be followed before the issuance of an order of destruction of circuit court files and records:

(a) The judgment or decree, if any, shall be reproduced pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, or separated and retained, and the original or reproduction shall be made available for public inspection.

(b) The circuit court shall offer the files and records, subject to the order of destruction, to the Michigan historical commission established by section 1 of 1913 PA 271, MCL 399.1, or a historical commission created under section 2 of 1957 PA 213, MCL 399.172. If the historical commission accepts the offer within

30 days, the circuit court shall transfer the files and records to the historical commission. If the historical commission does not accept the offer within 30 days, the circuit court shall issue an order of destruction.

(5) A reproduction of a record in a medium pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, or a reproduction consisting of a printout or other output readable by sight from such a medium, made as provided by law, has the same force and effect as the original would have had and shall be treated as an original for the purpose of admissibility in evidence. A duly certified or authenticated copy of the reproduction shall be admitted into evidence equally with the original reproduction.

(6) Except for records described in subsection (3), this section only applies to records filed with the court and maintained by the court clerk or register.

History: 1961, Act 236, Eff. Jan 1, 1963;—Am. 1964, Act 244, Eff. Aug. 28, 1964;—Am. 1975, Act 248, Imd. Eff. Sept. 4, 1975;—Am. 1984, Act 43, Imd. Eff. Mar. 26, 1984;—Am. 1986, Act 308, Eff. Jan. 1, 1987;—Am. 1992, Act 192, Imd. Eff. Oct. 5, 1992;—Am. 2001, Act 76, Imd. Eff. July 24, 2001;—Am. 2009, Act 239, Imd. Eff. Jan. 8, 2010.

Compiler's note: For transfer of powers and duties of department of history, arts, and libraries regarding state archives program to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

600.2138 Filed or recorded documents; copy or replacement; certification; admissibility as evidence; transcript or certified copy; filing or inserting correction, alteration, indorsement, or entry.

Sec. 2138. (1) If a public officer performing duties under this act is required or authorized by law to record, copy, recopy, or replace a document, plat, paper, written instrument, or book on file or of record in his or her office, the officer may do so pursuant to the records media act.

(2) If an original document, plat, paper, written instrument, record, or book of record filed or of record in the office of an officer described in subsection (1) is copied or replaced pursuant to subsection (1), and the officer is required by law to certify in or on the copy or replacement that it is a true and correct copy of the original, a copy of the certification by the officer, similarly made and included at the end of the copy or replacement, complies with the law.

(3) If produced under this or any other law, a copy, record, reproduction, or replacement or an enlarged reproduction of any of these is considered an original for all purposes and is admissible in evidence in like manner as the original.

(4) A transcript or certified copy of a reproduction described in subsection (3) is considered a transcript or certified copy of the original.

(5) If a record or replacement of a record in the office of an officer described in subsection (1) is produced pursuant to this section, a correction, alteration, indorsement, or entry, required or authorized to be made of or on an instrument or paper or on the record of the instrument or paper, may be made by filing or inserting a copy or recopy, produced by the same process, of the page or part of the page, so corrected or altered or on which such indorsement or entry is made, next to the place where the copy or record of the instrument or paper is contained or in such other manner as the officer considers advisable or practicable.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1964, Act 244, Eff. Aug. 28, 1964;—Am. 1992, Act 192, Imd. Eff. Oct. 5, 1992.

600.2139 Seal; presumptive evidence of consideration.

Sec. 2139. In any action upon a sealed instrument, and where a counterclaim is founded on any sealed instrument, the seal thereof shall only be presumptive evidence of a sufficient consideration, which may be rebutted in the same manner, and to the same extent, as if such instrument were not sealed.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2140 Corporate existence; proof.

Sec. 2140. In any suit or proceeding, civil or criminal hereafter instituted in any of the courts of this state, wherein it shall become material or necessary to prove the incorporation of any company or corporation, or the existence of any joint stock company or association, whether the same be a foreign or domestic corporation, company, or association, evidence that such corporation, company, or association is doing business under a certain name shall be prima facie proof of its due incorporation or existence pursuant to law, and of its name.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2141 Copartnership; proof.

Sec. 2141. In any suit or proceeding hereafter instituted in any of the courts of this state, wherein it shall become material or necessary to prove the copartnership of any firm or association the plaintiffs may cause to be served upon the defendant, with a copy of the complaint filed in the cause, or with the process by which

suit is commenced, an affidavit stating that the plaintiffs were the persons comprising such partnership at the time the contract in question was made, or the cause of action accrued; and such affidavit shall be prima facie evidence of such existence of such partnership or association, unless the defendant shall file with his plea an affidavit denying the existence of such partnership or association.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2142 Seal; prima facie proof of lawful execution of instruments by corporations, other firms.

Sec. 2142. Any corporation, joint stock company, or partnership association, limited, may have a common seal which it may alter at pleasure, and such seal affixed to any instrument purporting to be executed by any such corporation, joint stock company or partnership association, limited, foreign or domestic, shall be prima facie proof of the due adoption of said seal, and that it was affixed to said instrument by due authority, and that said instrument was in fact lawfully executed by such corporation, joint stock company or partnership association, limited.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2143 Subscribing witness to instrument need not be called; exception.

Sec. 2143. Whenever upon the trial of any action, civil or criminal, or upon the hearing of any judicial proceedings, a written instrument is offered in evidence, to which there is a subscribing witness, it shall not be necessary to call such subscribing witness, but such instrument may be proved in the same manner as it might be proved if there were no subscribing witness thereto, except in cases of written instruments to the validity of which 1 or more subscribing witnesses are required by law.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2144 Signature or handwriting; proof.

Sec. 2144. Whenever in any suit or proceeding in any of the courts of this state, it shall be necessary or proper to prove the signature or the handwriting of any person, it shall be competent to introduce in evidence for the purpose of comparison, any specimen or specimens of the handwriting or signature of such person, admitted or proved to the satisfaction of the court to be genuine, whether or not the paper on which such handwriting or signature appears is one admissible in evidence or connected with the case or not. If such paper is not one admissible in evidence for some other purpose, or connected with the case, it shall not be admissible in evidence for the purpose of comparison unless it was made before the controversy arose concerning which such suit or proceeding was brought.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2145 Open account or account stated; proof, counterclaim.

Sec. 2145. In all actions brought in any of the courts of this state, to recover the amount due on an open account or upon an account stated, if the plaintiff or someone in his behalf makes an affidavit of the amount due, as near as he can estimate the same, over and above all legal counterclaims and annexes thereto a copy of said account, and cause a copy of said affidavit and account to be served upon the defendant, with a copy of the complaint filed in the cause or with the process by which such action is commenced, such affidavit shall be deemed prima facie evidence of such indebtedness, unless the defendant with his answer, by himself or agent, makes an affidavit and serves a copy thereof on the plaintiff or his attorney, denying the same. If the defendant in any action gives notice, with his answer of a counterclaim founded upon an open account, or upon an account stated, and annexes to such answer and notice a copy of such account, and an affidavit made by himself or by someone in his behalf, showing the amount or balance claimed by the defendant upon such account, and that such amount or balance is justly owing and due to the defendant, or that he is justly entitled to have such account, or said balance thereof, set off against the claim made by said plaintiff, and serves a copy of such account and affidavit, with a copy of such answer and notice, upon the plaintiff or his attorney, such affidavit shall be deemed prima facie evidence of such counterclaim, and of the plaintiff's liability thereon, unless the plaintiff, or someone in his behalf, within 10 days after such service in causes in the circuit court, and before trial in other cases, makes an affidavit denying such account or some part thereof, and the plaintiff's indebtedness or liability thereon and serves a copy thereof upon the defendant or his attorney, and in case of a denial of part of such counterclaim, the defendant's affidavit shall be deemed to be prima facie evidence of such part of the counterclaim as is not denied by the plaintiff's affidavit. Any affidavit in this section mentioned shall be deemed sufficient if the same is made within 10 days next preceding the issuing of the writ or filing of the complaint or answer.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2146 Writing or record made in regular course of business; reproduction admissible in evidence; other circumstances; lack of entry; reproduction as evidence.

Sec. 2146. A writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum of an act, transaction, occurrence, or event is admissible in evidence in a proceeding in a court or before an officer, arbitrator, or referee in proof of the act, transaction, occurrence, or event if it was made in the regular course of business and it was the regular course of business to make such a memorandum at the time of, or within a reasonable time after, the act, transaction, occurrence, or event. Other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight but not its admissibility. The term "business" includes a business, profession, occupation, or calling of any kind. The lack of an entry regarding an act, transaction, occurrence, or event in a writing or record so proved may be received as evidence that the act, transaction, occurrence, or event did not, in fact, take place. A reproduction of such a writing or record is admissible in evidence in a trial, hearing, or proceeding by order of the court, made within its discretion, upon motion with notice of not less than 4 days. All circumstances of the making of the reproduction may be shown upon the trial, hearing, or proceeding to affect the weight but not the admissibility of the evidence.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1992, Act 192, Imd. Eff. Oct. 5, 1992.

600.2147 Business record prepared or entered in regular course of business; reproduction as evidence; delivery of copy to adverse party.

Sec. 2147. Notwithstanding any law of this state to the contrary, an individual, firm, association, or corporation may introduce in evidence at a trial or hearing before a court, officer, arbiter, referee, board, or tribunal, a reproduction of a business record of the individual or institution prepared or entered in the regular course of business, the original of which would be admissible in evidence, including an existing record and including, but not by way of limitation, a check, bill, note, acceptance, or other type of commercial instrument, passbook, deposit slip, or statement furnished to depositors, whether or not the individual or institution regularly so reproduces any or all of such business records. The reproduction shall be in a medium pursuant to the records media act or consist of a printout or other output readable by sight from such a medium. The reproduction, if accompanied by the certificate of the individual or his or her employee or agent, or of the officer, agent, or employee of the firm, association, or corporation who supervised the making of the reproduction to the effect that the reproduction when made was a true, full, and complete reproduction of the original, shall be received as evidence at the trial or hearing with the same force and effect as though the original document were produced. However, the court, officer, arbiter, referee, board, or tribunal may in its discretion require that the original document be produced in evidence, and may also require the taking of testimony of the person who supervised the making of the reproduction. The reproduction is admissible only if the party offering it delivers a copy of it, or of so much of it as may relate to the controversy, to the adverse party a reasonable time before trial, unless in the opinion of the trial court, officer, arbiter, referee, board, or tribunal the adverse party has not been unfairly surprised by the failure to deliver the copy. Nevertheless, such a reproduction need not be submitted to the adverse party as herein prescribed unless the original instrument would be required to be so submitted. If necessary, the reproduction may be offered in evidence by the use of a projector or other similar device. All circumstances surrounding the making of the reproduction may be shown upon the trial, hearing, or proceeding for the purpose of affecting the weight but not the admissibility of the evidence.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1992, Act 192, Imd. Eff. Oct. 5, 1992.

600.2148 Reproduced records of business firms; disposal of original record; admissibility of reproduction in evidence; "person" defined.

Sec. 2148. (1) A person, firm, or corporation engaged in business may cause records kept by the business to be reproduced pursuant to the records media act, and the business may then dispose of the original record.

(2) A reproduction in a medium pursuant to the records media act under subsection (1) or a reproduction consisting of a printout or other output readable by sight from such a medium is considered to be an original record for all purposes and shall be treated as an original record in a court or administrative agency for the purpose of its admissibility in evidence. A facsimile, exemplification, enlargement, or certified copy of such a reproduction, for all purposes, is considered a facsimile, exemplification, or certified copy of the original record.

(3) For purposes of this section, "person" means an individual, association, firm, partnership, company, or corporation.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1964, Act 244, Eff. Aug. 28, 1964;—Am. 1992, Act 192, Imd. Eff. Oct. 5, 1992.

600.2149 Loss of instrument; proof and disproof.

Sec. 2149. Whenever a party to any instrument shall have been permitted to prove by his own oath the loss of any instrument, in order to admit other proof of the contents thereof, the adverse party may also be examined by the court on oath, to disprove such loss, and to account for such instrument.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2150 Repealed. 1962, Act 174, Eff. Jan. 1, 1964.

Compiler's note: The repealed section pertained to suit founded on lost negotiable bill or note.

600.2151 Admission of member of corporation as evidence.

Sec. 2151. In suits by or against a corporation, the admission of any member thereof not named on the record as a party to such suit shall not be received as evidence against such corporation, unless such admission was made concerning some transaction in which such member was the authorized agent of such corporation.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2152 Mental competency of testator; presumption.

Sec. 2152. In proceedings for the probate of wills, it shall not be necessary for the proponent in the first instance to introduce any proof to show the competency of the decedent to make a will, but the like presumption of mental competency shall obtain as in other cases.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2153 Public officers; administration of oaths for certain purposes.

Sec. 2153. Whenever any application is made to any public officer or board of officers to do any act in an official capacity, and such officer or board requires information or proof to enable him or them to decide on the propriety of doing such act, such information or proof may be required to be given by affidavit, and such officer or any member of such board, may administer all necessary oaths for that purpose.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2154 Witness; obligation to answer through revealing civil liability; self-incrimination.

Sec. 2154. Any competent witness in a cause shall not be excused from answering a question relevant to the matter in issue, on the ground merely that the answer to such question may establish, or tend to establish, that such witness owes a debt, or is otherwise subject to a civil suit; but this provision shall not be construed to require a witness to give any answer which will have a tendency to accuse himself of any crime or misdemeanor, or to expose him to any penalty or forfeiture, nor in any respect to vary or alter any other rule respecting the examination of witnesses.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2155 Statement, writing, or action expressing sympathy, compassion, commiseration, or benevolence; admissibility in action for malpractice; "family" defined.

Sec. 2155. (1) A statement, writing, or action that expresses sympathy, compassion, commiseration, or a general sense of benevolence relating to the pain, suffering, or death of an individual and that is made to that individual or to the individual's family is inadmissible as evidence of an admission of liability in an action for medical malpractice.

(2) This section does not apply to a statement of fault, negligence, or culpable conduct that is part of or made in addition to a statement, writing, or action described in subsection (1).

(3) As used in this section, "family" means spouse, parent, grandparent, stepmother, stepfather, child, adopted child, grandchild, brother, sister, half brother, half sister, father-in-law, or mother-in-law.

History: Add. 2011, Act 21, Imd. Eff. Apr. 20, 2011.

Compiler's note: Former MCL 600.2155, which pertained to obligation of witness to answer, was repealed by Act 274 of 1984, Eff. Mar. 29, 1985.

Enacting section 1 of Act 21 of 2011 provides:

"Enacting section 1. This amendatory act applies only to civil actions filed on or after the effective date of this amendatory act."

600.2156 Minister, priest, or Christian Science practitioner; nondisclosure of confessions.

Sec. 2156. No minister of the gospel, or priest of any denomination whatsoever, or duly accredited Christian Science practitioner, shall be allowed to disclose any confessions made to him in his professional character, in the course of discipline enjoined by the rules or practice of such denomination.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1962, Act 187, Imd. Eff. May 24, 1962.

600.2157 Physician-patient privilege; waiver.

Sec. 2157. Except as otherwise provided by law, a person duly authorized to practice medicine or surgery shall not disclose any information that the person has acquired in attending a patient in a professional character, if the information was necessary to enable the person to prescribe for the patient as a physician, or to do any act for the patient as a surgeon. If the patient brings an action against any defendant to recover for any personal injuries, or for any malpractice, and the patient produces a physician as a witness in the patient's own behalf who has treated the patient for the injury or for any disease or condition for which the malpractice is alleged, the patient shall be considered to have waived the privilege provided in this section as to another physician who has treated the patient for the injuries, disease, or condition. If a patient has died, the heirs at law of the patient, whether proponents or contestants of the patient's will, shall be considered to be personal representatives of the deceased patient for the purpose of waiving the privilege under this section in a contest upon the question of admitting the patient's will to probate. If a patient has died, the beneficiary of a life insurance policy insuring the life of the patient, or the patient's heirs at law, may waive the privilege under this section for the purpose of providing the necessary documentation to a life insurer in examining a claim for benefits.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1989, Act 102, Eff. Sept. 1, 1989;—Am. 1995, Act 205, Imd. Eff. Nov. 29, 1995.

600.2157a Definitions; consultation between victim and sexual assault or domestic violence counselor; admissibility.

Sec. 2157a. (1) For purposes of this section:

(a) "Confidential communication" means information transmitted between a victim and a sexual assault or domestic violence counselor, or between a victim or sexual assault or domestic violence counselor and any other person to whom disclosure is reasonably necessary to further the interests of the victim, in connection with the rendering of advice, counseling, or other assistance by the sexual assault or domestic violence counselor to the victim.

(b) "Domestic violence" means that term as defined in section 1501 of Act No. 389 of the Public Acts of 1978, being section 400.1501 of the Michigan Compiled Laws.

(c) "Sexual assault" means assault with intent to commit criminal sexual conduct.

(d) "Sexual assault or domestic violence counselor" means a person who is employed at or who volunteers service at a sexual assault or domestic violence crisis center, and who in that capacity provides advice, counseling, or other assistance to victims of sexual assault or domestic violence and their families.

(e) "Sexual assault or domestic violence crisis center" means an office, institution, agency, or center which offers assistance to victims of sexual assault or domestic violence and their families through crisis intervention and counseling.

(f) "Victim" means a person who was or who alleges to have been the subject of a sexual assault or of domestic violence.

(2) Except as provided by section 11 of the child protection law, Act No. 238 of the Public Acts of 1975, being section 722.631 of the Michigan Compiled Laws, a confidential communication, or any report, working paper, or statement contained in a report or working paper, given or made in connection with a consultation between a victim and a sexual assault or domestic violence counselor, shall not be admissible as evidence in any civil or criminal proceeding without the prior written consent of the victim.

History: Add. 1984, Act 340, Eff. Mar. 29, 1985.

600.2157b Confidential communication to crime stoppers organization; definitions.

Sec. 2157b. (1) Except as provided in subsection (2) or (3), a person shall not be required to do either of the following in a civil or criminal proceeding:

(a) Disclose, by way of testimony or otherwise, a confidential communication to a crime stoppers organization.

(b) Produce, under subpoena, any records, documentary evidence, opinions, or decisions relating to a confidential communication to a crime stoppers organization by way of any discovery procedure.

(2) An individual arrested and charged with a criminal offense or an individual who is a party in a civil proceeding may petition the court for an inspection conducted in camera of the records of a confidential communication to a crime stoppers organization concerning that individual. The petition shall allege facts showing that the records would provide evidence favorable to the defendant or the party in a civil proceeding and relevant to the issue of guilt or punishment, or liability. If the court determines that the person is entitled to all or any part of those records, the court may order production and disclosure as it deems appropriate.

(3) The prosecution in a criminal proceeding may petition the court for an inspection conducted in camera

of the records of a confidential communication to a crime stoppers organization that the prosecution contends was made by the defendant, or by another individual acting on behalf of the defendant, for the purpose of providing false or misleading information to the crime stoppers organization. The petition shall allege facts showing that the records would provide evidence supporting the prosecution's contention and would be relevant to the issue of guilt or punishment. If the court determines that the prosecution is entitled to all or any part of those records, the court may order production and disclosure as it deems appropriate.

(4) As used in this section:

(a) "Confidential communication to a crime stoppers organization" means a statement by any person, in any manner whatsoever, to a crime stoppers organization for the purpose of reporting alleged criminal activity.

(b) "Crime stoppers organization" means a private, nonprofit organization that distributes rewards to persons who report to the organization information concerning criminal activity and that forwards the information to the appropriate law enforcement agency.

History: Add. 2006, Act 557, Imd. Eff. Dec. 29, 2006.

600.2158 Crime; interest or relationship of witness, effect.

Sec. 2158. No person shall be excluded from giving evidence on any matter, civil or criminal, by reason of crime or for any interest of such person in the matter, suit, or proceeding in question, or in the event of such matter, suit or proceeding, in which such testimony may be offered, or by reason of marital or other relationship to any party thereto; but such interest, relationship, or conviction of crime, may be shown for the purpose of drawing in question the credibility of such witness, except as is hereinafter provided.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2159 Parties as witnesses; depositions; comment on failure of criminal defendant to testify.

Sec. 2159. On the trial of any issue joined, or in any matter, suit or proceeding, in any court, or on any inquiry arising in any suit or proceeding in any court, or before any officer or person having by law, or by consent of parties, authority to hear, receive, and examine evidence, the parties to any such suit or proceeding named in the record, and persons for whose benefit such suit or proceeding is prosecuted, or defended, may be witnesses therein in their own behalf or otherwise, in the same manner as other witnesses, except as hereinafter otherwise provided; and the deposition of any such party or person may be taken and used in evidence under the rules and statutes governing depositions, and any such party or person may be proceeded against and compelled to attend and testify, as is provided by law for other witnesses. No person shall be disqualified as a witness in any civil or criminal case or proceeding by reason of his interest in the event of the same as a party or otherwise or by reason of his having been convicted of any crime; but such interest or conviction may be shown for the purpose of affecting his credibility. A defendant in any criminal case or proceeding shall only at his own request be deemed a competent witness, and his neglect to testify shall not create any presumption against him, nor shall the court permit any reference or comment to be made to or upon such neglect.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2160 Repealed. 1967, Act 263, Eff. Nov. 2, 1967.

Compiler's note: The repealed section provided for admissibility of testimony of opposite party on matters equally within knowledge of deceased or mentally incompetent person.

600.2161 Cross examination of opposite party or agent.

Sec. 2161. In any suit or proceeding in any court in this state, either party, if he shall call as a witness in his behalf, the opposite party, employee or agent of said opposite party, or any person who at the time of the happening of the transaction out of which such suit or proceeding grew, was an employee or agent of the opposite party, shall have the right to cross-examine such witness the same as if he were called by the opposite party; and the answers of such witness shall not interfere with the right of such party to introduce evidence upon any issue involved in such suit or proceeding, and the party so calling and examining such witness shall not be bound to accept such answers as true.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2162 Husband or wife as witness for or against other.

Sec. 2162. (1) In a civil action or administrative proceeding, a husband shall not be examined as a witness for or against his wife without her consent or a wife for or against her husband without his consent, except as provided in subsection (3).

(2) In a criminal prosecution, a husband shall not be examined as a witness for or against his wife without his consent or a wife for or against her husband without her consent, except as provided in subsection (3).

(3) The spousal privileges established in subsections (1) and (2) and the confidential communications privilege established in subsection (7) do not apply in any of the following:

(a) In a suit for divorce, separate maintenance, or annulment.

(b) In a prosecution for bigamy.

(c) In a prosecution for a crime committed against a child of either or both or a crime committed against an individual who is younger than 18 years of age.

(d) In a cause of action that grows out of a personal wrong or injury done by one to the other or that grows out of the refusal or neglect to furnish the spouse or children with suitable support.

(e) In a case of desertion or abandonment.

(f) In a case in which the husband or wife is a party to the record in a suit, action, or proceeding if the title to the separate property of the husband or wife called or offered as a witness, or if the title to property derived from, through, or under the husband or wife called or offered as a witness, is the subject matter in controversy or litigation in the suit, action, or proceeding, in opposition to the claim or interest of the other spouse, who is a party to the record in the suit, action, or proceeding. In all such cases, the husband or wife who makes the claim of title, or under or from whom the title is derived, shall be as competent to testify in relation to the separate property and the title to the separate property without the consent of the husband or wife, who is a party to the record in the suit, action, or proceeding, as though the marriage relation did not exist.

(4) Except as otherwise provided in subsections (5) and (6), a married person or a person who has been married previously shall not be examined in a civil action or administrative proceeding as to any communication made between that person and his or her spouse or former spouse during the marriage.

(5) A married person may be examined in a civil action or administrative proceeding, with his or her consent, as to any communication made between that person and his or her spouse during the marriage regarding a matter described in subsection (3).

(6) A person who has been married previously may be examined in a civil action or administrative proceeding, with his or her consent, as to any communication made between that person and his or her former spouse during the marriage regarding a matter described in subsection (3).

(7) Except as otherwise provided in subsection (3), a married person or a person who has been married previously shall not be examined in a criminal prosecution as to any communication made between that person and his or her spouse or former spouse during the marriage without the consent of the person to be examined.

(8) In an action or proceeding instituted by the husband or wife, in consequence of adultery, the husband and wife are not competent to testify.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1994, Act 67, Imd. Eff. Apr. 11, 1994;—Am. 2000, Act 182, Eff. Oct. 1, 2000;—Am. 2001, Act 11, Imd. Eff. May 29, 2001.

Compiler's note: Section 2 of Act 67 of 1994 reads as follows:

"This amendatory act applies to criminal cases in which a complaint and warrant are authorized on or after July 1, 1994. This amendatory act applies to civil cases which are pending on or filed on or after July 1, 1994."

600.2163 Repealed. 1998, Act 323, Imd. Eff. Aug. 3, 1998.

Compiler's note: The repealed section pertained to children under 10 years as witnesses.

600.2163a Definitions; prosecutions and proceedings to which section applicable; use of dolls or mannequins; support person; notice; videorecorded statement; special arrangements to protect welfare of witness; videorecorded deposition; section additional to other protections or procedures; violation as misdemeanor; penalty.

Sec. 2163a. (1) As used in this section:

(a) "Custodian of the videorecorded statement" means the department of human services, investigating law enforcement agency, prosecuting attorney, or department of attorney general or another person designated under the county protocols established as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.

(b) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, except that, for the purposes of implementing this section, developmental disability includes only a condition that is attributable to a mental impairment or to a combination of mental and physical impairments and does not include a condition attributable to a physical impairment unaccompanied by a mental impairment.

(c) "Videorecorded statement" means a witness's statement taken by a custodian of the videorecorded

statement as provided in subsection (5). Videorecorded statement does not include a videorecorded deposition taken as provided in subsections (18) and (19).

(d) "Vulnerable adult" means that term as defined in section 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m.

(e) "Witness" means an alleged victim of an offense listed under subsection (2) who is any of the following:

(*i*) A person under 16 years of age.

(*ii*) A person 16 years of age or older with a developmental disability.

(*iii*) A vulnerable adult.

(2) This section only applies to the following:

(a) For purposes of subsection (1)(e)(*i*) and (*ii*), prosecutions and proceedings under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328.

(b) For purposes of subsection (1)(e)(*iii*), 1 or more of the following:

(*i*) Prosecutions and proceedings under section 110a, 145n, 145o, 145p, 174, or 174a of the Michigan penal code, 1931 PA 328, MCL 750.110a, 750.145n, 750.145o, 750.145p, 750.174, and 750.174a.

(*ii*) Prosecutions and proceedings for an assaultive crime as that term is defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a.

(3) If pertinent, the witness shall be permitted the use of dolls or mannequins, including, but not limited to, anatomically correct dolls or mannequins, to assist the witness in testifying on direct and cross-examination.

(4) A witness who is called upon to testify shall be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony. A notice of intent to use a support person shall name the support person, identify the relationship the support person has with the witness, and give notice to all parties to the proceeding that the witness may request that the named support person sit with the witness when the witness is called upon to testify during any stage of the proceeding. The notice of intent to use a named support person shall be filed with the court and shall be served upon all parties to the proceeding. The court shall rule on a motion objecting to the use of a named support person before the date at which the witness desires to use the support person.

(5) A custodian of the videorecorded statement may take a witness's videorecorded statement before the normally scheduled date for the defendant's preliminary examination. The videorecorded statement shall state the date and time that the statement was taken; shall identify the persons present in the room and state whether they were present for the entire videorecording or only a portion of the videorecording; and shall show a time clock that is running during the taking of the videorecorded statement.

(6) A videorecorded statement may be considered in court proceedings only for 1 or more of the following:

(a) It may be admitted as evidence at all pretrial proceedings, except that it may not be introduced at the preliminary examination instead of the live testimony of the witness.

(b) It may be admitted for impeachment purposes.

(c) It may be considered by the court in determining the sentence.

(d) It may be used as a factual basis for a no contest plea or to supplement a guilty plea.

(7) A videorecorded deposition may be considered in court proceedings only as provided by law.

(8) In a videorecorded statement, the questioning of the witness should be full and complete; shall be in accordance with the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628, or as otherwise provided by law; and, if appropriate for the witness's developmental level or mental acuity, shall include, but is not limited to, all of the following areas:

(a) The time and date of the alleged offense or offenses.

(b) The location and area of the alleged offense or offenses.

(c) The relationship, if any, between the witness and the accused.

(d) The details of the offense or offenses.

(e) The names of any other persons known to the witness who may have personal knowledge of the alleged offense or offenses.

(9) A custodian of the videorecorded statement may release or consent to the release or use of a videorecorded statement or copies of a videorecorded statement to a law enforcement agency, an agency authorized to prosecute the criminal case to which the videorecorded statement relates, or an entity that is part of county protocols established under section 8 of the child protection law, 1975 PA 238, MCL 722.628, or as otherwise provided by law. The defendant and, if represented, his or her attorney has the right to view and hear a videorecorded statement before the defendant's preliminary examination. Upon request, the prosecuting attorney shall provide the defendant and, if represented, his or her attorney with reasonable access and means to view and hear the videorecorded statement at a reasonable time before the defendant's pretrial or trial of the

case. In preparation for a court proceeding and under protective conditions, including, but not limited to, a prohibition on the copying, release, display, or circulation of the videorecorded statement, the court may order that a copy of the videorecorded statement be given to the defense.

(10) If authorized by the prosecuting attorney in the county in which the videorecorded statement was taken, a videorecorded statement may be used for purposes of training the custodians of the videorecorded statement in that county on the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628, or as otherwise provided by law.

(11) Except as provided in this section, an individual, including, but not limited to, a custodian of the videorecorded statement, the witness, or the witness's parent, guardian, guardian ad litem, or attorney, shall not release or consent to release a videorecorded statement or a copy of a videorecorded statement.

(12) A videorecorded statement that becomes part of the court record is subject to a protective order of the court for the purpose of protecting the privacy of the witness.

(13) A videorecorded statement shall not be copied or reproduced in any manner except as provided in this section. A videorecorded statement is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to release under another statute, and is not subject to disclosure under the Michigan court rules governing discovery. This section does not prohibit the production or release of a transcript of a videorecorded statement.

(14) If, upon the motion of a party made before the preliminary examination, the court finds on the record that the special arrangements specified in subsection (15) are necessary to protect the welfare of the witness, the court shall order those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court shall consider all of the following:

(a) The age of the witness.

(b) The nature of the offense or offenses.

(c) The desire of the witness or the witness's family or guardian to have the testimony taken in a room closed to the public.

(d) The physical condition of the witness.

(15) If the court determines on the record that it is necessary to protect the welfare of the witness and grants the motion made under subsection (14), the court shall order both of the following:

(a) All persons not necessary to the proceeding shall be excluded during the witness's testimony from the courtroom where the preliminary examination is held. Upon request by any person and the payment of the appropriate fees, a transcript of the witness's testimony shall be made available.

(b) In order to protect the witness from directly viewing the defendant, the courtroom shall be arranged so that the defendant is seated as far from the witness stand as is reasonable and not directly in front of the witness stand. The defendant's position shall be located so as to allow the defendant to hear and see the witness and be able to communicate with his or her attorney.

(16) If upon the motion of a party made before trial the court finds on the record that the special arrangements specified in subsection (17) are necessary to protect the welfare of the witness, the court shall order those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court shall consider all of the following:

(a) The age of the witness.

(b) The nature of the offense or offenses.

(c) The desire of the witness or the witness's family or guardian to have the testimony taken in a room closed to the public.

(d) The physical condition of the witness.

(17) If the court determines on the record that it is necessary to protect the welfare of the witness and grants the motion made under subsection (16), the court shall order 1 or more of the following:

(a) All persons not necessary to the proceeding shall be excluded during the witness's testimony from the courtroom where the trial is held. The witness's testimony shall be broadcast by closed-circuit television to the public in another location out of sight of the witness.

(b) In order to protect the witness from directly viewing the defendant, the courtroom shall be arranged so that the defendant is seated as far from the witness stand as is reasonable and not directly in front of the witness stand. The defendant's position shall be the same for all witnesses and shall be located so as to allow the defendant to hear and see all witnesses and be able to communicate with his or her attorney.

(c) A questioner's stand or podium shall be used for all questioning of all witnesses by all parties and shall be located in front of the witness stand.

(18) If, upon the motion of a party or in the court's discretion, the court finds on the record that the witness is or will be psychologically or emotionally unable to testify at a court proceeding even with the benefit of the protections afforded the witness in subsections (3), (4), (15), and (17), the court shall order that the witness

may testify outside the physical presence of the defendant by closed circuit television or other electronic means that allows the witness to be observed by the trier of fact and the defendant when questioned by the parties.

(19) For purposes of the videorecorded deposition under subsection (18), the witness's examination and cross-examination shall proceed in the same manner as if the witness testified at the court proceeding for which the videorecorded deposition is to be used. The court shall permit the defendant to hear the testimony of the witness and to consult with his or her attorney.

(20) This section is in addition to other protections or procedures afforded to a witness by law or court rule.

(21) A person who intentionally releases a videorecorded statement in violation of this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both.

History: Add. 1987, Act 44, Eff. Jan. 1, 1988;—Am. 1989, Act 253, Eff. Mar. 29, 1990;—Am. 1998, Act 324, Imd. Eff. Aug. 3, 1998;—Am. 2002, Act 604, Eff. Mar. 31, 2003;—Am. 2012, Act 170, Imd. Eff. June 19, 2012.

600.2164 Expert witnesses; fees; contempt for excessive fees; number; application of section.

Sec. 2164. (1) No expert witness shall be paid, or receive as compensation in any given case for his services as such, a sum in excess of the ordinary witness fees provided by law, unless the court before whom such witness is to appear, or has appeared, awards a larger sum, which sum may be taxed as a part of the taxable costs in the case. Any such witness who shall directly or indirectly receive a larger amount than such award, and any person who shall pay such witness a larger sum than such award, shall be guilty of contempt of court, and on conviction thereof be punished accordingly.

(2) No more than 3 experts shall be allowed to testify on either side as to the same issue in any given case, unless the court trying such case, in its discretion, permits an additional number of witnesses to testify as experts.

(3) The provisions of this section shall not be applicable to witnesses testifying to the established facts, or deductions of science, nor to any other specific facts, but only to witnesses testifying to matters of opinion.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.2164a Expert witness; testimony at trial by video communication equipment; motion; payment of cost.

Sec. 2164a. (1) If a court has determined that expert testimony will assist the trier of fact and that a witness is qualified to give the expert testimony, the court may, with the consent of all parties, allow the expert witness to be sworn and testify at trial by video communication equipment that permits all the individuals appearing or participating to hear and speak to each other in the court, chambers, or other suitable place. A verbatim record of the testimony shall be taken in the same manner as for other testimony.

(2) Unless good cause is shown to waive the requirement, a party who wishes to present expert testimony by video communication equipment under subsection (1) shall submit a motion in writing and serve a copy of the motion on all other parties at least 7 days before the date set for the trial.

(3) A party who initiates the use of video communication equipment under this section shall pay the cost for its use, unless the court otherwise directs.

History: Add. 2012, Act 68, Eff. June 1, 2012.

Compiler's note: Enacting section 1 of Act 68 of 2012 provides:
"Enacting section 1. This amendatory act takes effect June 1, 2012 and applies only to actions filed on or after June 1, 2012."

600.2165 Disclosure of students' records or communications by school teacher or employee.

Sec. 2165. No teacher, guidance officer, school executive or other professional person engaged in character building in the public schools or in any other educational institution, including any clerical worker of such schools and institutions, who maintains records of students' behavior or who has records in his custody, or who receives in confidence communications from students or other juveniles, shall be allowed in any proceedings, civil or criminal, in any court of this state, to disclose any information obtained by him from the records or such communications; nor to produce records or transcript thereof, except that testimony may be given, with the consent of the person so confiding or to whom the records relate, if the person is 18 years of age or over, or, if the person is a minor, with the consent of his or her parent or legal guardian.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1972, Act 87, Imd. Eff. Mar. 20, 1972.

600.2166 Admissibility of evidence in action by or against person incapable of testifying.

Sec. 2166. (1) In an action by or against a person incapable of testifying, a party's own testimony shall not

be admissible as to any matter which, if true, must have been equally within the knowledge of the person incapable of testifying, unless some material portion of his testimony is supported by some other material evidence tending to corroborate his claim.

(2) A "person incapable of testifying" includes an individual who is incapable of testifying by reason of death or incompetency and his heirs, legal representatives, or assigns; and includes an individual, corporation, or other entity, or the successors thereof, whose agent, having material knowledge of the matter, is incapable of testifying by reason of death or incompetency. A "party's own testimony" includes the testimony of his agents, successors, assigns, predecessors, or assignors.

(3) In any such actions, all entries, memoranda, and declarations by the individual so incapable of testifying, relevant to the matter, as well as evidence of his acts and habits of dealing tending to disprove or show the improbability of the claims of the adverse party, may be received in evidence.

(4) When the deposition, affidavit, or testimony of a person incapable of testifying is taken in his lifetime or when he is mentally sound, and is read in evidence in the action, the affidavit or testimony of the other party shall be admitted in his own behalf on all matters mentioned or covered in the deposition, affidavit, or testimony. When the testimony or deposition of a witness has once been taken and used, or has heretofore been taken and used, upon the trial of any cause, and the same was, when so taken and used, competent and admissible under this section, the subsequent death or incompetency of the witness or of any other person shall not render the testimony incompetent under this section, but the testimony shall be received upon any subsequent trial of such cause.

History: Add. 1967, Act 263, Eff. Nov. 2, 1967;—Am. 1969, Act 63, Imd. Eff. July 21, 1969;—Am. 1974, Act 305, Imd. Eff. Dec. 9, 1974.

Compiler's note: Section 2 of Act 305 of 1974 provides: "This 1974 amendatory act shall apply to actions pending on its effective date and to actions commenced thereafter, regardless of whether the cause of action arose prior to the effective date of this act or arose thereafter."

600.2167 Preliminary examination or grand jury proceeding; receiving technician's report in evidence; furnishing copies to attorney; notice; adjournment; testimony by technician, forensic pathologist, or medical examiner; use of video or voice communication equipment.

Sec. 2167. (1) In a preliminary examination or grand jury proceeding, a report of the findings of a technician of the division of the department of state police concerned with forensic science, signed by that technician, or a notarized copy of the report, may be received in evidence in place of the technician's appearance and testimony.

(2) Before a preliminary examination at which the technician's report of findings will be introduced in evidence, 2 copies of the report shall be furnished to the prosecuting attorney. The prosecuting attorney shall immediately furnish 1 copy of the technician's report to the defense attorney or, if an appearance or appointment of defense counsel has not been filed, to the defendant.

(3) The prosecuting attorney, upon receiving copies of the technician's report, shall notify the court before which the preliminary examination will be held that copies of the technician's report are in the prosecutor's possession. If the prosecuting attorney fails to notify the court that he or she has received copies of the technician's report not less than 5 days before the day set for preliminary examination, the court shall adjourn the preliminary examination.

(4) An accused person or his or her attorney may request that the technician testify at the preliminary examination on behalf of the state by serving written notice on the prosecuting attorney not more than 5 days after receiving a copy of the technician's report of findings from the prosecuting attorney. The technician may be sworn and testify by video or voice communication equipment that permits the witness, court, all parties, and counsel to hear and speak to each other in the court, chambers, or other suitable place. A record of the testimony shall be taken in the same manner as for other testimony at the preliminary examination. If suitable video or voice communication equipment is not available, the technician shall testify in person.

(5) In a preliminary examination, the prosecuting attorney may move in writing not less than 5 days before the date set for the preliminary examination to permit a forensic pathologist or medical examiner to be sworn and testify by video or voice communication equipment that permits the witness, court, all parties, and counsel to hear and speak to each other in the court, chambers, or other suitable place. The court shall grant the motion for good cause shown. A record of the testimony shall be taken in the same manner as for other testimony at the preliminary examination.

History: Add. 1976, Act 30, Imd. Eff. Mar. 5, 1976;—Am. 1993, Act 288, Eff. Mar. 1, 1994.

600.2169 Qualifications of expert witness in action alleging medical malpractice;

determination; disqualification of expert witness; testimony on contingency fee basis as misdemeanor; limitations applicable to discovery.

Sec. 2169. (1) In an action alleging medical malpractice, a person shall not give expert testimony on the appropriate standard of practice or care unless the person is licensed as a health professional in this state or another state and meets the following criteria:

(a) If the party against whom or on whose behalf the testimony is offered is a specialist, specializes at the time of the occurrence that is the basis for the action in the same specialty as the party against whom or on whose behalf the testimony is offered. However, if the party against whom or on whose behalf the testimony is offered is a specialist who is board certified, the expert witness must be a specialist who is board certified in that specialty.

(b) Subject to subdivision (c), during the year immediately preceding the date of the occurrence that is the basis for the claim or action, devoted a majority of his or her professional time to either or both of the following:

(*i*) The active clinical practice of the same health profession in which the party against whom or on whose behalf the testimony is offered is licensed and, if that party is a specialist, the active clinical practice of that specialty.

(*ii*) The instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession in which the party against whom or on whose behalf the testimony is offered is licensed and, if that party is a specialist, an accredited health professional school or accredited residency or clinical research program in the same specialty.

(c) If the party against whom or on whose behalf the testimony is offered is a general practitioner, the expert witness, during the year immediately preceding the date of the occurrence that is the basis for the claim or action, devoted a majority of his or her professional time to either or both of the following:

(*i*) Active clinical practice as a general practitioner.

(*ii*) Instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession in which the party against whom or on whose behalf the testimony is offered is licensed.

(2) In determining the qualifications of an expert witness in an action alleging medical malpractice, the court shall, at a minimum, evaluate all of the following:

(a) The educational and professional training of the expert witness.

(b) The area of specialization of the expert witness.

(c) The length of time the expert witness has been engaged in the active clinical practice or instruction of the health profession or the specialty.

(d) The relevancy of the expert witness's testimony.

(3) This section does not limit the power of the trial court to disqualify an expert witness on grounds other than the qualifications set forth in this section.

(4) In an action alleging medical malpractice, an expert witness shall not testify on a contingency fee basis. A person who violates this subsection is guilty of a misdemeanor.

(5) In an action alleging medical malpractice, all of the following limitations apply to discovery conducted by opposing counsel to determine whether or not an expert witness is qualified:

(a) Tax returns of the expert witness are not discoverable.

(b) Family members of the expert witness shall not be deposed concerning the amount of time the expert witness spends engaged in the practice of his or her health profession.

(c) A personal diary or calendar belonging to the expert witness is not discoverable. As used in this subdivision, "personal diary or calendar" means a diary or calendar that does not include listings or records of professional activities.

History: Add. 1986, Act 178, Eff. Oct. 1, 1986;—Am. 1993, Act 78, Eff. Apr. 1, 1994.

Constitutionality: MCL 600.2169 is an enactment of substantive law. As such it does not impermissibly infringe the Supreme Court's constitutional rule-making authority over "practice and procedure." McDougall v Schanz, 461 Mich 15; 597 NW2d 148 (1999).

Compiler's note: Section 3 of Act 178 of 1986 provides:

"(1) Sections 2925b, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.

"(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.

"(3) Sections 1629, 1653, 2169, 2591, 2912c, 2912d, 2912e, 6098, 6301, 6303, 6305, 6306, 6307, 6309, and 6311 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after October 1, 1986.

"(4) Sections 1651 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to cases filed before October 1, 1986.

"(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after

January 1, 1987.

"(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988."